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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

COUNTY OF LOS ANGELES, Plaintiff and Respondent, v. MARINO IVANOV et al., Defendants and Appellants.	B242806 (Los Angeles County Super. Ct. No. MC022564)

APPEAL from a judgment of the Superior Court of Los Angeles County. Brian C. Yep, Judge. Affirmed.

Jonathan T. Trevillyan for Defendants and Appellants.

John F. Krattli, County Counsel, Lawrence L. Hafetz, Assistant County Counsel, and Dušan Pavlović, Deputy County Counsel, for Plaintiff and Respondent.

Defendants Marino Ivanov, Jennifer Ivanov, and Storybrook Properties, Inc., own and operate a mobilehome park. When they failed to obtain a conditional use permit (CUP) for the continued operation of the mobilehome park, plaintiff County of Los Angeles (the County) cited them for violation of the Los Angeles County Planning and Zoning Code (Zoning Code) and ordered them to either apply for and obtain a CUP or cease operating the mobilehome park. Defendants refused to bring the property into compliance with the Zoning Code, prompting the County to bring suit against them. The County moved for summary judgment, which the trial court granted. Defendants appeal, contending: (1) the Zoning Code is preempted by state law; (2) the Zoning Code only applies to new mobilehome parks; (3) the Zoning Code's amortized schedule amounts is illegal; and (4) the County did not provide them with adequate notice of the alleged Zoning Code violation.

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The mobilehome park

Defendants own and operate a 15-space mobilehome park on a rural property in the unincorporated community of Leona Valley, located within the County (the property). The property is a 10-acre desert lot located in the A-1 (light-agricultural) zone. It has been used as a mobilehome park and rented to tenants since the 1950's. Since 1983, the property has lawfully operated pursuant to an annual permit to operate, issued by the State of California Department of Housing and Community Development.

Defendants purchased the property in 2005.

The Zoning Code

In 1978, the County Board of Supervisors enacted an ordinance amending Zoning Code section 22.24.100 to require a CUP for operation of mobilehome parks in the A-1 zone. Pursuant to Zoning Code section 22.56.1540(B)(1)(g), all properties developed as a mobilehome park prior to 1978 received either a 20-year or 25-year amortization period, after which time the affected property owners were required to either discontinue the nonconforming use or apply for and secure a CUP, as set forth in Zoning Code

sections 22.56.010 et seq. and 22.52.500. Finally, Zoning Code section 22.60.350 provides that any property used in violation of the Zoning Code constitutes a public nuisance.

Defendants did not possess a CUP

In May 2007, the County learned that defendants did not possess a CUP to operate the mobilehome park. As a result, it served notice of violations on defendants, maintaining that the use of a mobilehome park was not permitted without a CUP. Then, the County cited defendants for violation of the Zoning Code and ordered them to either apply for and obtain a CUP or cease operating the mobilehome park within 30 days. After defendants refused to comply with the County's administrative enforcement order, the County imposed a $2,289 noncompliance fee. Defendants paid the fee, but failed to bring the property into compliance with the Zoning Code.

The instant action

On May 10, 2011, the County filed the instant action against defendants, alleging that their use of the property violates the Zoning Code and that such violation constitutes a public nuisance per se.

On June 28, 2011, defendants filed an answer and cross-complaint, alleging, inter alia, that they were not required to comply with the Zoning Code because it was preempted by the Mobilehome Parks Act (MPA) (Health & Saf. Code, § 18200 et seq.); that they were not required to obtain a CUP; and that the County failed to provide defendants with proper notice, in violation of their due process rights.

The County then moved for summary judgment. After entertaining oral argument, the trial court granted the County's motion.

Defendants' timely appeal ensued.

DISCUSSION

I. *Standard of Review*

"A trial court properly grants summary judgment where no triable issue of material fact exists and the moving party is entitled to judgment as a matter of law.

(Code Civ. Proc., § 437c, subd. (c).) We review the trial court's decision de novo." (*Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 476.)

II. *Judgment was Proper*

We conclude that the trial court properly awarded judgment to the County. The County's complaint alleges two causes of action against defendants: (1) violation of Zoning Code section 22.24.025; and (2) public nuisance per se.

To prove a claim for violation of the Zoning Code, the County was required to establish that (1) defendants own, use, or maintain the property, (2) the property is used as a mobilehome park, (3) the property is located in the A-1 zone, and (4) defendants do not possess a CUP to operate the mobilehome park. The County presented undisputed evidence in support of each of these elements. Having established that defendants violated the Zoning Code, the County also proved through undisputed facts that the use of the property without a CUP constitutes a public nuisance per se.[1] (Zoning Code, § 22.60.350.)

In urging us to reverse, defendants argue that they are not required to obtain a CUP to operate the mobilehome park because Zoning Code provisions are preempted by the MPA.

A local law is preempted by state law when (1) it duplicates state law; (2) contradicts state law; or (3) enters an area fully occupied by state law, either expressly or by legislative implication. (*Action Apartment Assn., Inc. v. City of Santa Monica* (2007) 41 Cal.4th 1232, 1242.) Local legislation enters an area that is fully occupied by general law when the state Legislature has manifested its intent to fully occupy the area. (*City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153, 1169.)

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1 We reject defendants' contention that pursuant to Civil Code section 3482 (statutory immunity) the mobilehome park is not a public nuisance. It is not defendants' operation of a mobilehome park that constitutes the alleged nuisance; rather, it is defendants' operation of a mobilehome park without a CUP that constitutes a public nuisance.

The MPA regulates the construction, maintenance, occupancy, use, and design of mobilehome parks. (Health & Saf. Code, §§ 18250-18254.) Thus, as the County agrees, the State of California fully occupies the field with respect to mobilehome regulation. (Health & Saf. Code, § 18300, subd. (a).) However, the statutory framework also makes it clear that the state tolerates limited local action. (See, e.g., Health & Saf. Code, § 18300, subd. (g)(1); *County of Santa Cruz v. Waterhouse* (2005) 127 Cal.App.4th 1483, 1492.) Specifically, the County is expressly authorized to establish zones where mobilehomes may be located and nothing in the statutory scheme "prevent[s]" the County "from adopting rules and regulations by ordinance or resolution prescribing park perimeter walls or enclosures on public street frontage, signs, access, and vehicle parking or from prescribing the prohibition of certain uses for mobilehome parks." (Health & Saf. Code, §18300, subd. (g)(1).) In other words, local governments do retain authority to regulate location and land use in mobilehome parks. (*Sequoia Park Associates v. County of Sonoma* (2009) 176 Cal.App.4th 1270, 1281.) Because Zoning Code section 22.52.500 regulates only expressly authorized aspects of use and development of mobilehome parks, it stays within the confines of Health and Safety Code section 18300, subdivision (g)(1), and is not preempted by state law.

Defendants further argue that the County cannot require them to obtain a CUP because the mobilehome park existed on the property prior to the enactment of the 1978 amendment to the Zoning Code. Nothing in the plain language of Health and Safety Code section 18300, subdivision (g), suggests that a local authority's right to regulate a mobilehome park applies only to new mobilehome parks. Absent legal authority in support of defendants' proposition, it fails. (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.)

In any event, defendants are mistaken; the County may require a CUP for a previously existing mobilehome park with expired nonconforming status. A nonconforming use is a land use that lawfully existed on the effective date of a new or amended zoning ordinance and has existed in its original form without conformance to the new ordinance. "California cases have firmly held zoning legislation may validly

provide for the eventual termination of nonconforming property uses without compensation if it provides a reasonable amortization period commensurate with the investment involved." (*Castner v. City of Oakland* (1982) 129 Cal.App.3d 94, 96.)

Under the Zoning Code, all properties developed as a mobilehome park prior to 1978 received either a 20-year or 25-year amortization period, after which time the affected property owners were required to either discontinue the nonconforming use or apply for and secure a CUP. (Zoning Code, § 22.56.1540(B)(1).) It is undisputed that defendants' mobilehome park existed on the property at the time the 1978 amendment to the Zoning Code was enacted. At that time, the property became a nonconforming use. Defendants had until the expiration of the amortization period to secure a CUP.

In challenging the amortization set forth in Zoning Code section 22.56.1540, defendants assert that the amortized schedule amounts are illegal. Again, however, defendants neglect to offer any legal authority in support of their contention. (*Benach v. County of Los Angeles, supra*, 149 Cal.App.4th at p. 852.) And, other than unfounded hyperbole, there is no evidence or argument to support defendants' claim that the 25-year period to eliminate its nonconforming status was anything less than reasonable. (*National Advertising Co. v. County of Monterey* (1970) 1 Cal.3d 875, 878 [legislation may validly provide for eventual discontinuance of nonconforming uses within a prescribed reasonable amortization period]; *Tahoe Regional Planning Agency v. King* (1991) 233 Cal.App.3d 1365, 1396 [owner/user of the property bears the burden of establishing unreasonableness of amortization period].)

Finally, defendants argue that their due process rights were violated as the County did not provide them with proper notice of the alleged Zoning Code violations. This issue is a red herring. Regardless of whether defendants were served with proper notice of the alleged Zoning Code violations, it is undisputed that they were timely and properly served with the complaint and moving papers in this case. And, once again, defendants fail to offer any legal authority in support of their suggestion that the alleged failure to serve proper notice of Zoning Code violations obviates the County's claims asserted in this lawsuit. (*Benach v. County of Los Angeles, supra*, 149 Cal.App.4th at p. 852.)

DISPOSITION

The judgment is affirmed. The County is entitled to costs on appeal.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.*
FERNS

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.